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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/585,434

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EXAMINER

NDUBIZU, CHUKA CLEMENT

ART UNIT

PAPER NUMBER

3743

MAIL DATE

DELIVERY MODE

08/17/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/585,434	Applicant(s) HUANG, XINHUA	
	Examiner CHUKA C. NDUBIZU	Art Unit 3743	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Through April 9 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>070706</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the press plate must be shown or the feature(s) canceled from the claim(s). The line indicating the press plate 4 is not pointing to any structure in figs 1 and 2. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

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Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jon 5,597,299 in view of Tsang 6,695,610. Jon teaches the invention as claimed (see figs 1-6). With regard to claim 1 Jon discloses a flint wheel lighter with a safety device, comprises, a casing 1 (fig 1); a fuel container disposed in the casing (column 3 lines 24-25); a vent assembly (nozzle 2 and valve (not shown) but suggested "pulled up and opened by ignition lever 3" (column 3 line 40-41), It is also old and well known in the art that the vent assembly includes a valve as disclosed by Tsang 6,695,610 (column 1 lines 15-17)); an ignition assembly 3, 4, 7 and 8; and a windproof hood arranged above the fuel container (top left of 8 in fig 1); wherein the ignition assembly is located on the side opposite to the windproof hood (fig 1); the ignition assembly comprises a press plate 3, a flint 4 (fig 2), and a flint wheel 7 and 8; and a bent safety rod 9 rotatable with

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the flint wheel (see fig 4A and 4B) is disposed on a top side surface of the said flint wheel (fig 1), with both ends 9A and 9B of two sections of the bent safety rod protruding out of the rim of the flint wheel (fig 2); in a safe mode, the end of one section 9A butts against the support body 6 and the end of the other section lies over the flint wheel (see fig 2).

With regard to claim 6 Jon also discloses; a vent assembly disposed on the same side as the windproof hood (see fig 1 and 2); and an ignition assembly disposed on the other side (fig 1); the vent assembly comprises a vent valve (suggested in column 3 lines 40-41) and a vent needle 2 which are assembled in a conventional way, the vent needle functions to cooperate with the press plate 3 (column 3 lines 40-41); the angle formed by two sections (the smaller angle between 9A and 9B) of the bent safety rod ranges from 60° to 150° (less than 180° is within this range (column 4 lines 24-25)) , and both ends 9A and 9B of the two sections protrudes out of the rim of the flint wheel (fig 2).

Tsang specifically discloses a vent assembly comprising a vent valve 9 and a vent needle 6 (fig 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Jon's lighter by including a vent valve in order to provide a means of controlling the flow of fuel out of the tank.

With regard to the safety rod being disposed on a side surface of the flint wheel instead of on the top side of the flint wheel as taught by Jon, this is deemed a matter of

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rearrangement of parts that would not affect the functioning of the device. *In re Japikse*, 181. F.2d 1019, 86 USPQ 70 (CCPA 1950), MPEP 2144.04 VI C.

With regard to the end of one section abutting the inner surface of the edge of the top cover of the windproof hood instead of against the support body as taught by Jon this is deemed a matter of engineering design choice. Applicant failed to disclose any criticality for requiring the abutment to be against the edge of the top cover of the windproof hood. Abutting the safety rod against the support body stops the rotation effectively.

With regard to claims 2 and 9 Jon also discloses the angle between 9A and 9B to be less than 180° (column 4 lines 24-25) and 120° is within this range. Tsang also discloses, that the striker wheel must rotate a minimum of 120° (column 2 lines 38-40) which meets the limitations of the claim.

With regard to claims 3 and 7 Jon also discloses wherein the safety rods 9 are disposed on the two side surfaces of the flint wheel, the safety rods are parallel to one another (see fig 3) the two safety rods form a safety assembly (column 4 lines 5-8).

Jon does not disclose the two rods connected by a shaft. Connection the rods by a shaft is a matter of design choice. Jon has enough structures (e.g. the wheels 8) on both sides of the rods that they do not need additional connection (fig 3).

With regard to claim 4 Jon also discloses wherein the angle formed by the two sections ranges from 60° to 150°(less than 180° is within this range (column 4 lines 24-25)).

With regard to claims 5 and 8 the flint wheel being coaxially connected to the safety rod, and a correspondent pivot hole being provided in the safety rod is deemed a matter resulting from a rearrangement of parts where the safety rod is disposed on a side surface of the flint wheel instead of on the top side of the flint wheel as taught by Jon. This rearrangement of parts would not affect the functioning of the device. Since Jon's rods are disposed on the top side of the flint wheel they do not need to be coaxially connected to the flint wheel, and a correspondent pivot hole provided in them. *"Omission of an Element and its function is obvious if the function of the element is not desired." In re Larson 340 F.2d 965, 144 USPQ 347 (CCPA 1965) see MPEP 2144.04 II A.*

Conclusion

The prior art made of record in the attached USPTO 892 and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHUKA C. NDUBIZU whose telephone number is (571)272-6531. The examiner can normally be reached on Monday - Friday 8.30 - 4.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kenneth Rinehart can be reached on 571-272-4881. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Chuka C Ndubizu/
Examiner, Art Unit 3743

/Kenneth B Rinehart/
Supervisory Patent Examiner, Art
Unit 3743

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